

Serial No. 10/517,099

Amend. In Resp. to Off. Act. of July 14, 2008

UTILITY PATENT

B&amp;D No. P-US-PR-1080

REMARKS

Applicants have amended Claims 1. Currently in the application therefore are Claims 1-6, 8-9, 11 and 17.

The Examiner rejected Claims 1, 3-4, 8-9 and 17 under 35 USC § 102(b) as being anticipated by US Patent No. 4,328,728 ("Ferdinand"). In addition, the Examiner rejected Claim 2 under 35 USC § 103(a) as being unpatentable over Ferdinand in view of US Patent No. 5,988,031 ("Wixey"). The Examiner also rejected Claim 11 under 35 USC § 103(a) as being unpatentable over Ferdinand in view of US Patent No. 5,097,601 ("Pollak"). Reconsideration and withdrawal of these rejections are respectfully requested.

As shown in Ferdinand, each fence 100 can rotate about 138 to change its position relative to the cutting line. Because each fence 100 rotates about a fixed point, they are not longitudinally adjustable along the cutting line. In other words, they do not move forwardly or rearwardly in a direction parallel to the cutting line. Therefore, if a fence is moved between two positions, the fence plane in the first position will not be parallel to the fence plane in the second position.

By contradistinction, Claim 1 requires that the fence be "longitudinally adjustable along along a direction substantially parallel to the cutting line so that the fence is disposable in a first position defining a first plane supporting a workpiece and a second position defining a second plane supporting the workpiece, the first and second planes being parallel."

Serial No. 10/517,099

Amend. In Resp. to Off. Act. of July 14, 2008

UTILITY PATENT

B&amp;D No. P-US-PR-1080

The Examiner argues that the fence can be moved between two positions “by small incremental degrees provid[ing] two positions that maintain substantially parallel fence alignment.” Even if this were true, Claim 1 requires that the two plane positions be parallel, not substantially parallel. This ensures a high-quality accurate cut that would not be obtained otherwise. Therefore Ferdinand cannot anticipate Claim 1 and its dependent claims.

Furthermore, mounting members cannot be the claimed rigid support element.

Applicants refer to the print-out from the Merriam Webster Online Dictionary ([www.m-w.com](http://www.m-w.com)) for the term “rigid” attached to the previous Amendment. As seen in the print-out, “rigid” is basically defined as inflexible or stiff. Because fences 100 move relative to each other about axis 138, the mounting members 116 also rotate about axis 138. Mounting members 116 are effectively a hinge that allow for rotation. A person skilled in the art would not call a hinge “unflexible” or “rigid,” anymore than such person would call a door hinge “unflexible.”

By contradistinction, Claim 1 calls for “a rigid support element extending outside the first plane when in the first position and extending between and rigidly connected to the first and second portions.” This helps in ensuring that the first and second portions are substantially coplanar in the different positions, something that does not occur in Ferdinand. Accordingly, Ferdinand cannot anticipate Claim 1 and its dependent claims.

Such missing elements are not found Wixey or Pollak. Accordingly, even if Ferdinand were to be combined with Wixey or Pollak, the resulting combination would not have all the

Serial No. 10/517,099

Amend. In Resp. to Off. Act. of July 14, 2008

UTILITY PATENT

B&amp;D No. P-US-PR-1080

claimed elements. Therefore such combinations cannot render unpatentable Claim 1 and its dependent claims.

No fee is believed due. Nonetheless, the Commissioner is authorized to charge payment of any fees due in processing this amendment, or credit any overpayment to Deposit Account No. 02-2548.

In view of the foregoing, Claims 1-6, 8-9, 11 and 17 are patentable and the application is believed to be in condition for formal allowance.

Respectfully submitted,



Adan Ayala  
PTO Reg. No. 38,373  
Attorney for Applicants

The Black & Decker Corporation  
701 East Joppa Road  
Towson, Maryland 21286  
(410) 716-2368